

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

GRANTEE'S ADDRESS FOR MAILING:

State of California
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95814

CONSERVATION BANK, HCP, OR PERMIT NAME

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this ____ day of _____, 20__, by Bank Operator Name, ("Grantor"), in favor of THE STATE OF CALIFORNIA acting through its Department of Fish and Game, a subdivision of the California Resources Agency - OR _____ Nonprofit organization satisfying requirements of § 815 of the California Civil Code ("Grantee").

RECITALS:

A. Grantor is the sole owner in fee simple of certain real property in the County of _____, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein (the "Property").

B. The Property possesses wildlife and habitat values (collectively, "conservation values") of great importance to Grantor, Grantee, and the people of the State of California and the United States.

C. This Conservation Easement Deed is being executed and delivered pursuant to the (Name) Conservation Banking Agreement, HCP, or Permit (the "Conservation Instrument"), whereby conservation requirements may be satisfied through establishment of a conservation easement on the Property, including all attachments, amendments, and any Management Plan incorporated in the Conservation Instrument, and which is incorporated herein by reference and attached hereto in relevant part at **Exhibit B**; any and all reference herein to the Conservation Instrument shall be construed to include reference to any incorporated Management Plan, which shall provide conservation requirements for this Conservation Easement should the Conservation Instrument terminate for any reason, and which is attached hereto at **Exhibit B** in its entirety. D. The Property provides or is capable of providing significant ecological and habitat values that benefit endangered, threatened, and other species

(collectively, "conservation values"), as set forth in the Conservation Instrument, including the: _____.

E. The California Department of Fish and Game ("CDFG"), a division of the State of California, has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species within the State of California pursuant to Fish and Game Code §1802; the CDFG is also authorized to hold easements for these purposes pursuant to California Civil Code §815.3, Fish and Game Code §1348, and other provisions of California law.

F. The United States Fish and Wildlife Service ("USFWS"), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. §§1531, *et seq.* ("ESA"), the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §§742(f), *et seq.*, and other provisions of Federal law.

G. Grantor intends to convey to Grantee the right to preserve, protect, sustain, and enhance and/or restore the conservation values of the Property in perpetuity.

H. Grantee is authorized to hold conservation easements pursuant to California Civil Code §815.3 and, as relevant to tax-exempt non-profit organizations, §501(c)(3) of the Internal Revenue Code.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and the State of California including California Civil Code §815 *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character consistent with the Conservation Instrument to the extent hereinafter set forth (**the "Conservation Easement"**).

1. Purpose. The purpose of this Conservation Easement is to ensure that the Property will be retained forever in a condition contemplated by the Conservation Instrument and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to such activities including, without limitation, those involving the preservation and enhancement of native species

and their habitats in a manner consistent with the conservation purposes of this Conservation Easement and the Conservation Instrument.

2. Rights of Grantee. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee, along with the right of enforcement to the CDFG and the USFWS or their designee as third party beneficiaries hereof, consistent with the Conservation Instrument:

A. To preserve, protect, sustain, and enhance and/or restore the conservation values of the Property.

B. To enter upon the Property at reasonable times to monitor Grantor's compliance with and to otherwise enforce the terms of this Conservation Easement; provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property.

C. To prevent any activity on or use of the Property that is inconsistent with the habitat conservation purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

D. All mineral, air and water rights necessary to preserve, protect and sustain the biological resources and conservation values of the Property, unless specifically excluded from this Easement, including Grantor's right, title and interest in and to any waters consisting of: (a) any riparian water rights appurtenant to the Property; (b) any appropriative water rights held by Grantor to the extent those rights are appurtenant to the Property; (c) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Property; and (d) any water from wells that are in existence or may be constructed in the future on the Property or on those lands described as excepted from the Property in the legal description and that were historically used by the Grantor to maintain the Property in a flooded condition (collectively, "Easement Waters"). The Easement Waters are limited to the amount of Grantor's waters reasonably required to maintain the conservation values of the Property.

E. All present and future development rights.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the conservation purposes of this Conservation Easement and the Conservation Instrument is prohibited. Without limiting the generality of the foregoing, Grantor, its personal representatives, heirs, successors, assigns, employees, agents, lessees, licensees and invitees are expressly prohibited from doing or permitting any of the following on the Property unless specifically authorized by the Conservation Instrument and any related Management Plan:

A. Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement.

B. Unseasonable watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; mosquito abatement activities; weed abatement activities; incompatible fire protection activities; and any and all other uses which may adversely affect the conservation purposes of this Conservation Easement.

C. Grazing and agricultural activity of any kind.

D. Commercial or industrial uses.

E. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids or any other material.

F. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes.

G. Altering the surface or general topography of the Property, including building roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material.

H. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for: (i) fire breaks; (ii) maintenance of existing foot trails or roads; (iii) prevention or treatment of disease; or (iv) utility line clearance.

I. Use of motorized vehicles, including off-road vehicles, except on existing roadways.

J. Transferring any water right necessary to maintain or restore the biological resources of the Property.

K. Planting, introduction or dispersal of non-native or exotic plant or animal species.

L. Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Property and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters.

M. Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing.

N. Permitting a general right of access to the property.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the conservation values of the Property and are inconsistent with the

Conservation Instrument. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under this Conservation Easement, including, but not limited to, Grantee's water rights.

5. **Grantor's Reserved Rights.** All rights accruing from Grantor's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purposes of this Conservation Easement, are reserved to Grantor and Grantor's personal representatives, heirs, successors, and assigns .

6. **Remedies for Violation and Corrective Action.** If Grantee, Grantor, or a third party beneficiary determines there is a violation of the terms of this Conservation Easement or that a violation is threatened, written notice of such violation and a demand for corrective action sufficient to cure the violation shall be given to Grantor or Grantee. In any instance, measures to cure the violation shall be reviewed and approved by third party beneficiaries CDFG and USFWS. If a violation is not cured within 30 days after receipt of written notice and demand, or if the cure reasonably requires more than 30 days to complete and there is failure to begin the cure within the 30-day period or failure to continue diligently to complete the cure, Grantee, Grantor, or third party beneficiary may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance with the terms of this Conservation Easement, to recover any damages to which Grantee, Grantor, or third party beneficiary may be entitled for violation of the terms of this Conservation Easement or for any injury to the conservation values of the Property, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury. Without limiting violator's liability therefore, any damages recovered may be applied to the cost of undertaking any corrective action on the Property.

6.1 **Injunctive Relief.** If Grantee, Grantor, or third party beneficiary, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee, Grantor, or third party beneficiary may pursue its remedies under this Section without prior notice or without waiting for the period provided for cure to expire to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, and to require the restoration of the Property to the condition that existed prior to any such injury. The remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code §815 *et seq.*; inclusive. The failure of Grantee, Grantor, or third party beneficiary to discover a violation or to take immediate legal action shall not bar taking such action at a later time.

6.2 **Standing.** If at any time Grantee, Grantor, or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes not

in conformance with the stated conservation purposes contained herein, or releases or threatens to abandon this Conservation Easement in whole or in part, then, notwithstanding California Civil Code §815 *et seq.*, the California Attorney General, the USFWS and other third-party entities eligible to hold conservation easements for conservation purposes under State and Federal law, or any entity or individual with a justiciable interest in the preservation of this Conservation Easement has standing as an interested party in any proceeding affecting this Conservation Easement.

6.3 Costs of Enforcement. All reasonable costs incurred in enforcing the terms of this Easement including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by violation or negligence under the terms of this Conservation Easement shall be borne by the violator.

6.4 Enforcement Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, Grantor, or third party beneficiaries, and any forbearance to exercise rights of enforcement under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights under this Conservation Easement. No delay or omission in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

6.5 Acts Beyond Grantee's or Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee, Grantor, or any third party beneficiary to bring any action for any injury to or change in the Property resulting from causes beyond Grantee or Grantor's control, including, without limitation, fire not caused by Grantee or Grantor, flood, storm, and earth movement, or from any prudent action taken by Grantee or Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6.6 Third Party Beneficiary Right of Enforcement. All rights and remedies conveyed under this Conservation Easement shall extend to and are enforceable by third party beneficiaries CDFG (where CDFG is not Grantee) and USFWS. These rights of enforcement are in addition to, and do not limit, the rights of enforcement under the Conservation Instrument.

7. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including transfer costs, costs of title and documentation review, and maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable permits and approvals required for any activity or use permitted on the Property by this Conservation Easement Deed, and any such activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

7.1 Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep Grantee's interest in the Property free from any liens, including those arising out of any obligations incurred by Grantor for any labor or materials furnished or alleged to have been furnished at or for use on the Property.

7.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, orders, liens, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (b) Grantor's obligations specified in this Conservation Easement; and (c) the obligations, covenants, representations, and warranties of this Conservation Easement relating to Costs and Liabilities of this Section 7.

7.3 No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge of any release or threatened release of hazardous materials in, on, under, about, or affecting the Property. Without limiting the obligations of Grantor as otherwise provided in this instrument, Grantor agrees to indemnify, protect, and hold harmless the Indemnified Parties against any and all Claims arising from or connected with any hazardous materials present, released in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

8. Best and Most Necessary Use. The habitat conservation purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined in equity and pursuant to California Code of Civil Procedure §1240.680 notwithstanding Code of Civil Procedure §§1240.690 and 1240.700.

9. Conservation Easement Assignment or Transfer. This Conservation Easement may be assigned or transferred by Grantee or any successor in interest upon written approval of third party beneficiaries CDFG (where CDFG is not Grantee) and USFWS, which approval shall not be unreasonably withheld, but Grantee shall give Grantor, CDFG, and USFWS at least thirty (30) days prior written notice of the transfer. Approval of any assignment or transfer may be withheld whenever it will result in a

merger of the Conservation Easement and the Property in a single Property owner (thereby extinguishing the Conservation Easement) if no method or mechanism deemed adequate to preserve, protect, and sustain the Property in perpetuity has been established. Grantee or any successor in interest may assign or transfer its rights and obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code §815.3 and as approved by the CDFG and the USFWS. As a condition of such assignment or transfer, Grantee shall require that the conservation purposes of this Conservation Easement and the Conservation Instrument are carried out and notice of such restrictions, including the Conservation Instrument, shall be recorded in the County where the Property is located. The failure of Grantee to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or its enforcement in any way.

10. Subsequent Property Transfer. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give Grantee and third party beneficiaries CDFG (where CDFG is not Grantee) and USFWS written notice of the intent to transfer any interest at least 30 days prior to the date of such transfer. Grantee or any third party beneficiary shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement **or** whenever a subsequent Property transfer will result in a merger of the Conservation Easement and the Property in a single Property owner (thereby extinguishing the Conservation Easement) if no method or mechanism deemed adequate to preserve, protect, and sustain the Property in perpetuity has been established. The failure of Grantor to perform any act required by this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

11. Estoppel Certificates. Grantee shall, within 30 business days after receiving Grantor's request therefore, execute and deliver to Grantor a document certifying, to the best knowledge of the person executing the document, that Grantor is in compliance with any obligation of Grantor contained in this Conservation Easement, or otherwise evidencing the status of such obligation to the extent of Grantee's knowledge thereof, as may be reasonably requested by Grantor.

12. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor, Grantee, or third party beneficiaries CDFG and USFWS desires or is required to give to the others shall be in writing and either served personally or sent by first-class mail, postage prepaid or by recognized overnight courier that guarantees next-day delivery addressed as follows:

To Grantor: Conservation Instrument Owner/Operator Name
Address

Telephone:

Facsimile:

To Grantee and Third Party Beneficiaries:

To Grantee:

To CDFG: Office of the General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

Attn: General Counsel

Telephone:

Facsimile:

and to: California Department of Fish and Game
Region
Address
Attn: Regional Manager
Telephone:
Fax No.

To USFWS: United States Fish and Wildlife Service
Field Office
Address

Attn: Field Supervisor

Telephone:

Facsimile

or to such other address as a party shall designate by written notice to the others.

Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

13. Recordation. Grantor shall submit an original, signed and notarized Conservation Easement Deed to Grantee and Grantee shall promptly record this instrument in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded Conservation Easement to the Grantor and to USFWS and CDFG (where CDFG is not Grantee). Grantee may re-record at any time as may be required to preserve its rights in this Conservation Easement.

14. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and written approval of third party beneficiaries CDFG (where CDFG is not Grantee) and USFWS. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration, and Grantee shall promptly record this amended instrument in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded amended Conservation Easement to the Grantor and to USFWS and CDFG (where CDFG is not Grantee).

15. Funding. Funding shall be held in trust or by other means specified in the Conservation Instrument for the perpetual management, maintenance, and monitoring of this Conservation Easement and the Property in accordance with the Conservation Instrument.

16. Warranty. Grantor represents and warrants that there is no outstanding mortgage, lien, encumbrance, or other interest in the Property which has not been expressly subordinated to this Conservation Easement, and that, except for another Conservation Easement established in accordance with the Conservation Instrument and which is not adverse to the Conservation Easement established herein, the Property is not subject to any other easement or interest that is adverse to or is not subordinate to this Conservation Easement.

17. Additional Interests. Except for another conservation easement established in accordance with the Conservation Instrument and which is not adverse to the Conservation Easement established herein, Grantor shall not grant any additional interest in the Property, nor shall Grantor grant, transfer, abandon, or relinquish any water or water right associated with the Property, including without limitation any Easement Waters, without the prior written authorization of Grantee and third party beneficiaries CDFG (where CDFG is not Grantee) and USFWS. Such consent may be withheld if the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement and the Conservation Instrument or will impair or interfere with the conservation values of the Property. This Section shall not prohibit the transfer of a fee title or leasehold interest in the Property that is otherwise subject to and complies with the terms of this Conservation Easement.

18. Third-Party Beneficiaries and Access. Grantor and Grantee acknowledge that where CDFG or USFWS are neither Grantor nor Grantee, each is a third-party

beneficiary of this Conservation Easement with rights of access to the Property for monitoring or conservation activities contemplated by this Conservation Easement or the Conservation Instrument, and with rights to enforce all of the provisions of this Conservation Easement.

19. General Provisions.

19.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California and applicable Federal law including the ESA.

19.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the deed to effect the purposes of this Easement and the policy and purpose of Civil Code §815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

19.3 Severability. If any provision of this Easement or the application thereof is found to be invalid the remaining provisions of this Easement or the application of such provisions other than that found to be invalid shall not be affected thereby.

19.4 Entire Agreement. This instrument and the Conservation Instrument incorporated by reference herein, including all of the exhibits thereto, together set forth the entire agreement of the parties and supersede all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions herein.

19.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

19.6 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Property.

19.7 Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

19.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

19.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, Grantor has executed and delivered this Conservation Easement Deed as of the day and year first above written.

GRANTOR:

PROPERTY OWNER

Title:_____

Date:_____

Approved as to Form:

Grantee

By:_____

Title:_____

Date:_____

USFWS

By:_____

Title:_____

Date:_____

CDFG (Where not Grantee)

By:_____

Title:_____

Date:_____

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, the undersigned notary public, personally
appeared _____,

☐ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged
to me that ___ executed the same in ___ authorized capacity, and that by ___ signature
on the instrument the person, or the entity upon behalf of which the person acted,
executed the instrument.

WITNESS my hand and official seal.

Signature _____

**Exhibit A
to
Conservation Easement Deed**

The Property subject to this Easement is described as follows:

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement Deed by _____, dated _____, 200__, to _____, Grantee, [if State is Grantee: describe Grantee as the State of California, acting through the Department of Fish and Game (the "Department"), a governmental agency (under Government Code §27281)], is hereby accepted by the undersigned [where State is Grantee: officer on behalf of the Department, pursuant to authority conferred by resolution of the California Fish and Game Commission] on _____.

GRANTEE:

**NAME OF GRANTEE OR STATE OF
CALIFORNIA,
by and through the
DEPARTMENT OF FISH AND GAME**

By: _____

Title: _____
Authorized Representative Name

Date: _____